

DEXTER HUNGERFORD.

[To accompany bill H. R. No. 541.]

JULY 21, 1842.

Mr. TOMLINSON, from the Committee of Claims, made the following

REPORT :

The Committee of Claims, to whom has been referred the petition of Dexter Hungerford, of Watertown, Jefferson county, New York, report :

That the petitioner represents that, on the 8th August, 1825, he signed, as surety for Solomon White, a joint and several promissory note of \$800 25, payable four months from date, at the Utica bank, in the State of New York, to Samuel Adams, or his order; that the consideration of said note was certain property of the United States, sold at public auction at Sackett's Harbour, New York, by said Adams, as agent of the United States, purchased by said Solomon White; that the note being payable at a bank only a short time to run, he supposed it had been paid at maturity, as White was then perfectly responsible; that, at the time he signed said note as surety of White, he was in the occupation of, and had leased of him, a tavern stand and its appurtenances, situate in Watertown aforesaid, for which he agreed to pay and did pay an annual rent of \$450; that he continued to occupy said tavern stand, and pay said rent, until the 26th of September, 1827, when he purchased said premises of said White for the sum of \$3,500, which sum he fully paid to said White, except an incumbrance by way of mortgage on said premises, created by White to a third person, which he assumed to pay; that up to this time, and for a long period thereafter, he heard nothing of said note, supposing and believing it to be paid and discharged. Had he not so believed, he could have protected himself from any loss or damage by reason of signing said note with said White, either from the rents which he from time to time paid him, or from the purchase money of said property. He further says that, had the Government, at any time previous to the fall of 1827, instituted proceedings for the collection of said note, or apprised him of its non-payment, it could have been collected from the property of said White; but nothing having been done, and from the lapse of time, he having lost sight of any liability on his part for said White, the means of his security were gone and the property of White either squandered or sacrificed to pay his debts; that on the 1st of January, 1831, to the great surprise of the petitioner, a suit was instituted against him and said White, in favor of the United States, to recover the amount of said note, in the district court of the United States for the northern district of New York;

that on the 9th of May, 1832, the plaintiffs were non-suited; that on or about the 3d of July, 1832, a second suit was commenced against him and said White, on the same note, in the same court, and which they again defended, and at the May term of said court, in the year 1833, a judgment was rendered in their favor against the United States, on a demurrer to their pleadings in the case; that in March, 1834, a writ of error was sued out of the circuit court of the United States, and said cause removed into said court, where such proceedings were then had as that court at the January term thereof, in the year 1835, confirmed the judgment of the said district court. It does not appear from the petition and papers which have been referred, what were the pleadings which were interposed by the defendants upon which their judgments were rendered, but as seems they were not considered as conclusive, or a bar to a subsequent recovery, the committee infer they were pleas to the jurisdiction. The petitioner represents that thus far in sustaining his defences to said suits he expended about \$300; that he hoped the Government, or the district attorney, would have been satisfied and submitted to the repeated decision of said courts, and not further harass, oppress, and impoverish him in litigation, knowing as they did that he was a mere surety. But the district attorney not satisfied with the result of the former suits, sometime in the year 1837, commenced another suit in the supreme court of the State of New York, and, on a plea of the statute of limitations, interposed by the defendants, which he demurred to for the plaintiffs, a judgment has been tendered in favor of the United States, leaving certain issues of fact joined in said cause yet to be tried by a jury, and which will be tried whenever the district attorney shall so direct.

The petitioner further represents himself as poor, with a family dependant on him for support; that if the United States should eventually obtain judgment, his whole means are inadequate to the payment of this debt or any part of it. He therefore asks that the suit against him be discontinued, and the note as against him be cancelled and discharged.

The material facts presented and sworn to by the petitioner are sustained by the testimony of the honorable Micah Sterling, a gentleman of high character and standing in Jefferson county, New York. His affidavit is hereto annexed.

The present district attorney of the northern district of New York thus writes on the subject:

“UNITED STATES ATTORNEY’S OFFICE,

Utica, 29th January, 1842.

SIR: I have just received from the counsel of *Dexter Hungerford*, the substance of a petition, which it is designed to be forwarded to the Department of the Treasury.

Mr. Benton, my predecessor delivered to me the papers in a suit of the United States *vs.* White and Hungerford, in the supreme court of this State, founded on a promissory note for \$800 25, given in 1825 for naval stores, now at auction at Sackett’s Harbor, to White. In this suit a plea of the statute of limitations was interposed, and thereto a demurrer and rejoinder. I brought the cause to argument at the July term, and at October term judgment was given for the plaintiffs on the demurrer. The cause now stands for trial on the general issue. Until I was appointed, I knew

nothing of the matter. From papers in the office I find the note had been prosecuted in the United States district court, in which suit a judgment on demurrer was given for defendants, and a writ of error brought to the circuit court, when the judgment was affirmed: that court holding the law on the plea interposed for the defendant.

I was at Jefferson county last month, and made inquiry respecting the case, and became satisfied that the facts set forth in Mr. Hungerford's petition, as stated to me, are substantially correct. White, I understand, has become poor, and Hungerford is not worth much at this time. If Mr. H. had been called on for payment within some few years after the note fell due, he had the means of indemnity in his hands; now he has none. It will undoubtedly be a great hardship to enforce payment against Mr. H. under the circumstances, but whether your Department can grant relief, may be questionable. If not, it seems to me a fit case for the interposition of Congress.

"With great respect, I have the honor to be your obedient servant,

"J. A. SPENCER, *United States Attorney.*

"Hon. W. FORWARD,

"*Secretary of the Treasury.*"

The committee are drawn to the same conclusion with the district attorney, that it is a "fit case for the interposition of Congress." Though there may exist a technical legal right of recovery in favor of the United States, yet the unexplained and unaccountable negligence of the Government or their agents, for nearly six years before instituting any proceedings for the collection of the note, and this too of a note payable in four months from date at a bank, when at the time the note became due and payable, and for a long time thereafter, the surety had it in his power, and, in fact, the means in his own hands, to indemnify himself from loss, and when, by such negligence, he is rendered remediless in the premises from the want of knowledge of the existence of his liability, and from the insolvency of his principal surety, it is a fit case for the "favorable interposition of Congress;" more especially after such protracted and expensive litigation as seems to have taken place in this case, extending through a period of nearly 12 years, not yet terminated, and which, when terminated, will be so fruitless and barren in its results. If this had been a case as between individuals or citizens of the State of New York, the statute of limitations of that State would have been a complete bar to the second and subsequent suits commenced on said note.

The committee therefore recommend a bill for the relief of the petitioner.

